

Court indicated that there must be circumstances that 'take it out of the usual or ordinary case' where 'something unfair, unintended or unjust had occurred'. In addition to the relationship between SRL and D, the AAT noted SRL's deteriorating health and that, at the current rate of deductions from her disability support pension, the overpayment was unlikely to be recovered in her lifetime.

The AAT considered it appropriate to waive recovery of the debt in the special circumstances of the case.

#### Formal decision

The SSAT decision was set aside. SRL was not a member of a couple and had been overpaid. The debt should be waived as there were special circumstances.

[H.B.]

## Sole parent pension: marriage-like relationship

**STEPHENSON and SECRETARY TO THE DSS**  
(No. 13185)

**Decided:** 14 August 1998 by H.E. Hallowes.

Stephenson's sole parent pension (SPP) was cancelled on 2 May 1997. At the time of the AAT hearing, Stephenson shared a house with David Stephenson and her 2 children, Alice and Edith. She failed to advise the DSS at the time of her application for SPP that a male also lived there. She subsequently told the DSS he lived there but maintained they lived separate lives and were not a couple. Her reasons for this claim were that they did not share a bedroom, they did not have a regular sexual relationship, they lived separate lives and did not socialise together. In July 1995, Stephenson changed her name from Owens (her mother's name) to Stephenson. She told the AAT she did this because of her mother's reputation in the district.

Her daughter Alice was born on 7 May 1995 and Edith was born on 31 December 1996. She conceded that David was the father of her 2 children but maintained that they did not have a 'marriage-like relationship'. Her mother who resided with her when she first applied for SPP, moved out of the household in

May 1997 on Stephenson's 19th birthday. It appears her mother initially had a relationship with David. Stephenson initially regarded him as a 'protector'. When he first moved into the household he had prevented the sexual abuse that her mother failed to prevent.

On 22 April 1997, Stephenson told the DSS she would share premises with David until they were married. However, she continued to maintain they were not a couple but that David's status in the household was that of a boarder.

David had told the SSAT that he had a relationship with Stephenson's mother, Owens and that Stephenson had been infatuated with him since she was 13. They commenced a sexual relationship when she was 16.

#### The legislation

Section 249(1)(a)(i) of the *Social Security Act* states that a person is entitled to SPP if not a member of a couple. Section 4(2) provides that a person is a member of a couple, for the purposes of the Act if:

- that person has a relationship with a person of the opposite sex, and
- they are not legally married, but
- the relationship is a marriage-like relationship, and
- they are both over the age of consent, and
- they are not in a relationship prohibited by s.23B of the *Marriage Act 1961*.

Section 4(3) sets out the matters to be considered by the Secretary to the DSS in deciding whether there is a marriage-like relationship. These factors include whether there is joint ownership of real estate, significant pooling of income, sharing of everyday household expenses, joint responsibility for the care of children, the basis of the division of household, whether they hold themselves out as married, the assessment of friends and regular associates of the relationship, any joint social activities, any sexual relationship, the length of the relationship, the nature of the companionship and support between the two, and whether they consider that the relationship is likely to continue indefinitely.

#### Findings

The AAT found that there was an emotional connection between Stephenson and David which sometimes involved sex. There were no joint assets or liabilities. There was no joint bank account. Although David paid board, there was no 'significant' pooling of resources, there being no evidence that Stephenson's money was ever made available to David. She had the sole responsibility for the care and welfare

of the children and she was solely responsible for the housework. The AAT considered that following the departure of her mother from the household, Stephenson assumed responsibility for the household. She did not consult a partner in making decisions for the household. Responsibilities were not discussed and distributed. Stephenson did not hold herself out as a member of a couple in a long-term relationship and there was no independent evidence as to a commitment between the two. David had his own friends and they did not socialise together.

David had arrived in her life as a protector who managed to stop her sexual abuser. The AAT found that the relationship changed in May 1997 when her mother left the house. Edith was 2 months old at the time. The AAT was satisfied that the weight of the evidence indicated Stephenson then had to assume responsibility for her life for the first time. David retreated from the household and into his bedroom, his mental health having deteriorated. The AAT accepted that sex occurred occasionally. Their companionship and emotional support had diminished since her mother's departure.

The AAT found Stephenson's evidence to be credible, despite her lack of honesty about David residing in the house when she first applied for SPP. Stephenson and David did not have a marriage-like relationship. She was not a member of a couple.

#### Formal decision

The decision under review was set aside. In substitution the AAT decided, having had regard to all the matters referred to in subsection 4(3) of the Act, that the weight of the evidence supported the formation of the opinion that Stephenson did not have a marriage-like relationship with another person and on and from 2 May 1997 she was entitled to be paid SPP.

[H.B.]